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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re K.P. et al., Persons Coming Under the Juvenile Court Law.	B295286
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. B.P., Defendant and Appellant.	(Los Angeles County Super. Ct. No. 18LJJP00687)

APPEAL from orders of the Superior Court of Los Angeles County. Robin Kessler, Juvenile Court Referee. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court asserted jurisdiction over seven-year-old K.P. and four-year-old B.P. after finding their mother (Mother) failed to protect them from domestic violence and has mental health issues that led her to attempt suicide. At the subsequent disposition hearing, the court removed the children from Mother's custody and ordered her visits with the children be monitored. On appeal, Mother argues the removal order is not supported by substantial evidence and the court abused its discretion in requiring monitored visitation. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Referrals and Investigation

In September 2018, the Los Angeles County Department of Children and Family Services (DCFS) received a report that Mother was hospitalized after attempting suicide by overdosing on prescription medication. The reporter also said Mother is involved in domestic violence with her live-in-boyfriend, John A.

During the ensuing investigation, maternal step-grandmother told DCFS that Mother overdosed on Xanax while at home with the children and was taken to a hospital via an ambulance. Mother later sent maternal step-grandmother a text message stating that the next time, she is going to "finish herself off."

Maternal step-grandmother said she is worried for the children's safety because Mother told her that John A. had choked her, hit her, and threatened to set her on fire. According to maternal step-grandmother, Mother has a history of leaving John A. but reunifying with him shortly after. Maternal grandfather once tried to help Mother obtain a restraining order against John A., but Mother failed to follow through.

According to K.P. and B.P.'s father, Mother told him that John A. threatened to set her on fire while she was holding B.P., threw her into walls, and once drove his car into hers.

K.P. and B.P. indicated that they saw Mother after she had overdosed and were worried she might die. They also reported witnessing Mother and John A. fighting. K.P. said she saw John A. push Mother into a wall, and B.P. said she saw him put his hands around Mother's neck. B.P. also saw him holding a knife and was worried he would hurt Mother.

Mother initially told a DCFS social worker she had not attempted suicide, did not overdose, and did not know why the ambulance took her to the hospital. She also denied any domestic violence with John A., but said she kicked him out of her home as of September 13, 2018. Maternal great-grandfather, however, reported that John A. was living with Mother beyond that date.

During a subsequent interview, Mother said she was taken to the hospital because she took double the amount of Xanax she was prescribed and had a mental breakdown. She explained that she had been diagnosed with depression and anxiety as a child. Mother also reported that John A. had shoved her against a wall once or twice, but insisted he had never choked or punched her.

On October 16, 2018, while executing a removal order, a DCFS social worker saw B.P. and John A. walking together near Mother's home. They left the area when they saw the social worker. DCFS eventually detained the children and placed them with the maternal grandparents.

During a subsequent interview with a DCFS social worker, John A. said he moved out of Mother's house about three weeks after the children were detained.

Petition

On October 19, 2018, DCFS filed a petition asserting K.P. and B.P. are persons described by Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).[1] The petition alleged Mother and John A. engaged in multiple instances of domestic violence in the children's presence, and Mother failed to protect the children by allowing John A. to reside in the home and have unlimited access to them. It further alleged that Mother suffers from mental and emotional problems, including suicidal ideation and a suicide attempt, which render her incapable of providing the children regular care and supervision.

Jurisdiction Hearing

The court held the jurisdiction hearing on December 18, 2018. Mother entered a no contest plea. The court found true the allegations under section 300, subdivision (b)(1), regarding the domestic violence with John A. and Mother's mental health issues. The court dismissed the allegations under section 300, subdivision (a).

Disposition Hearing

The court held the disposition hearing on January 15, 2019. Mother testified that she had been involved in two domestic violence incidents with John A., but denied that he threatened to set her on fire. Mother acknowledged that K.P and B.P. were in the house during both incidents. She said she ended her relationship with John A. and did not intend to reunite with him.

Mother admitted that she took four Xanax pills the day she was hospitalized, which was four times the amount she was prescribed. She explained that she took the additional pills to try

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[1] All future statutory references are to the Welfare and Institutions Code.

to counteract the side effects caused by another medication she had been prescribed. Mother acknowledged she had suicidal thoughts in the past, but denied that she had attempted suicide.

Mother said she was currently enrolled in individual therapy, a parenting program, and a domestic violence program. She explained that she learned domestic violence affects her children and it is not emotionally healthy for the children to see her in that situation. Mother further testified that she was taking her prescribed medication and intended to continue doing so.

Mother submitted three letters documenting the various services she was receiving. The first letter indicated she had regularly attended therapy since November 2018, and previously attended therapy from July through September 2018. The second letter indicated Mother was prescribed a new psychotropic medication in September 2018. The final letter stated Mother enrolled in a domestic violence education program in December 2018, and had completed 4 of 21 sessions.

After Mother finished testifying, her counsel requested the children be returned to her custody. Counsel suggested the court could order unannounced visits by DCFS social workers to ensure the children were safe. Alternatively, counsel asked the court to grant Mother unmonitored visits.

The court removed the children from Mother's custody pursuant to section 361, subdivision (c). It found there was "clear and convincing evidence [of] a substantial risk if the children were returned to both parents. There are no reasonable means today by which to protect them without removing them from their parents' care." The court noted that, although Mother was participating in services, she still had "a lot to learn and a lot to

face up to and admit all that went on." The court also expressed concern that Mother had a history of reunifying with John A. after prior domestic violence incidents.

The court ordered monitored visitations with the children three times per week, with discretion to liberalize. It also ordered Mother participate in various services.

Mother timely appealed.

DISCUSSION

I. There is Substantial Evidence Supporting the Removal Order

Mother does not contest the juvenile court's December 18, 2018 jurisdictional findings that her mental health issues and failure to protect K.P. and B.P. from domestic violence placed the children at substantial risk of physical harm. She insists, however, that as of the January 15, 2019 disposition hearing, she had sufficiently addressed these issues such that there was no longer a risk to the children's safety. In support, Mother points to evidence that she was participating in services, was taking her medication, and had permanently ended her relationship with John A. Therefore, Mother maintains, returning the children to her home would not have placed them at substantial risk of harm and removal was unnecessary. She also contends the juvenile court erroneously failed to consider whether there were alterative means available to protect the children's physical safety without removing them from her custody. We find no merit to Mother's arguments.

A dependent child may properly be removed from a parent's custody when there is clear and convincing evidence of a substantial danger to the child's health, safety, and emotional well-being that cannot be eliminated by reasonable means short

of removal. (§ 361, subd. (c)(1).) A removal order is proper when there is " 'proof of a parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." [Citation.] The court may consider a parent's past conduct as well as present circumstances.' [Citation.]" (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.)

"On appeal from a dispositional order removing a child from a parent we apply the substantial evidence standard of review, keeping in mind that the trial court was required to make its order based on the higher standard of clear and convincing evidence. [Citation.]" (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 809; *In re Hailey T.* (2012) 212 Cal.App.4th 139, 146–147.)

Here, there is substantial evidence supporting the juvenile court's removal order. The record demonstrates that, as of the disposition hearing, Mother lacked meaningful insight into the risk John A. posed to her children. There is evidence of numerous instances of John A. being extremely violent with Mother in the children's presence, including choking her, throwing her against a wall, threatening to set her on fire, crashing into her car, and threatening her with a knife. At the disposition hearing, however, Mother downplayed the severity and frequency of the domestic violence, insisting there had been only two, relatively minor incidents. While Mother represented that she had permanently ended her relationship with John A., the evidence shows she has a history of reuniting with him after incidents of domestic violence, and had falsely told DCFS she kicked him out of her home in the past. Moreover, as of the

disposition hearing, Mother had attended only a handful of domestic violence classes, and expressed superficial insights into the risks such violence poses to her children. On this record, the juvenile court could have reasonably concluded there was a significant risk that Mother would resume her abusive relationship with John A., which would pose a substantial risk to the children's physical safety and emotional well-being if returned to her home. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 194–196 abrogated on other grounds by *In re R.T.* (2017) 3 Cal.5th 622 [discussing the harms to children from exposure to domestic violence]; *In re E.B.* (2010) 184 Cal.App.4th 568, 576 [" 'Both common sense and expert opinion indicate spousal abuse is detrimental to children.' "].)

There is also sufficient evidence from which the juvenile court could conclude that Mother's mental health issues would continue to pose a risk to the children if returned to her home. The evidence shows Mother has struggled with depression and anxiety since she was a child. Only four months before the disposition hearing, she was hospitalized after overdosing on prescription medication. Mother then sent a text message to maternal step-grandmother implying the overdose was a suicide attempt, and that she would attempt suicide again. Despite this evidence, Mother frequently changed her story about what led to her hospitalization and continued to deny that she had attempted suicide. From this, the juvenile court could have reasonably concluded Mother had yet to fully acknowledge and address the seriousness of her mental health issues and the risk they pose to her children.

Contrary to Mother's suggestions, the fact that she was attending therapy and taking her prescribed medication does not conclusively prove there was no longer a risk to the children posed by her mental health issues. Mother, in fact, was both attending therapy and taking her prescribed medication when she attempted suicide. Although Mother was subsequently prescribed new medication, there is no evidence that it has resolved the issues that led her to overdose and attempt suicide. Nor is there any evidence showing Mother has made significant progress in therapy. Accordingly, the juvenile court could have reasonably concluded Mother's mental health issues would continue to pose a serious risk of harm to the children if returned to her home.

There is no merit to Mother's contention that the juvenile court failed to consider alternatives to removal that might protect the children's safety. The court explicitly stated at the disposition hearing that it found "no reasonable means today by which to protect [the children] without removing them from their parents' care." In so finding, the court necessarily considered but rejected alternatives to removal, including Mother's suggestion of unannounced visits. (See *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1137, disapproved of on other grounds by *Renee J. v. Superior Court* (2001) 26 Cal.4th 735.)

II. The Court Did Not Abuse Its Discretion in Ordering Monitored Visitation

Mother contends the juvenile court abused its discretion in ordering monitored, as opposed to unmonitored, visitation. We disagree.

As Mother concedes, the juvenile court has broad discretion to determine the terms and conditions of visitation. (*In re Julie*

M. (1999) 69 Cal.App.4th 41, 48.) Only if " ' "the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citation]" ' " will we reverse such an order. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318, quoting *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 421.) " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' [Citations.]" (*In re Stephanie M., supra,* at pp. 318–319.)

As discussed in detail above, there is substantial evidence showing Mother's mental health issues and relationship with John A. pose an ongoing risk of harm to the children. The juvenile court could have reasonably concluded, based on such evidence, that it was not in the children's best interest to have unmonitored contact with Mother until she adequately addresses those issues. The order was not arbitrary, capricious, or patently absurd. There was no abuse of discretion.

DISPOSITION

The dispositional orders are affirmed.

BIGELOW, P.J.

We Concur:

GRIMES, J.

WILEY, J.